

SERVED: June 7, 2007

NTSB Order No. EA-5292

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 5th day of June, 2007

_____)	
MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-17887
v.)	
)	
LUIS A. MONTENEGRO,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent appeals the order of Administrative Law Judge William A. Pope, II, issued on February 8, 2007.¹ By that order, the law judge granted the Administrator's motion for summary judgment on her emergency revocation of respondent's mechanic

¹ A copy of the law judge's decisional order is attached.

certificate with airframe and powerplant ratings.² As discussed below, we deny the appeal.

The Administrator's order, filed as the complaint in this proceeding, alleged that:

1. You are now, and at all times mentioned herein, were the holder of Mechanic Certificate Number 595040859 with airframe and powerplant ratings.
2. By letters dated October 4, 2004, and July 5, 2005, you were advised by the FAA that there is uncertainty about your qualifications to hold a mechanic certificate with airframe and powerplant ratings and that a reexamination of your competency is necessary.
3.
 - a. As requested in the above letters, on December 7, 2005, you submitted to a reexamination of your qualifications at the Flight Standards District Office in Orlando, Florida.
 - b. The results of the above reexamination were unsatisfactory.

The Administrator determined that respondent lacked the qualifications necessary to hold his mechanic certificate with airframe and powerplant ratings, and therefore that safety in air commerce and the public interest required revocation of respondent's certificate.

In his answer to the complaint, respondent admitted to paragraphs 1 and 2, and stated that he is without knowledge to admit the allegations in paragraph 3. Respondent also claimed

² Respondent waived the expedited procedures normally applicable to emergency revocation proceedings under the Board's rules.

several affirmative defenses, namely, that, "there was no cause established for the reexamination," respondent was "not provided a reasonable opportunity to respond to the allegations," and the testing associated with his original qualification for his mechanic certificate was "adequate and otherwise legitimate."

The Administrator filed a motion for summary judgment, arguing that no material issues of fact remained for resolution. Attached to the motion was an affidavit from Robert Cunningham, the principal maintenance inspector who compiled the enforcement investigative report related to respondent's case.

Mr. Cunningham stated that, while a grade of 70 percent or higher is required to pass the reexamination, respondent received a score of 40 percent and, thus, did not pass. In his response to the Administrator's motion, respondent challenges the basis for the reexamination request, and claims he received adequate and legitimate tests when he was initially tested and, therefore, should never have been asked to submit to a reexamination.

The law judge granted the Administrator's motion for summary judgment, finding that no material facts remained in dispute. He correctly noted that respondent did not challenge the truthfulness or accuracy of Inspector Cunningham's affidavit and, further, that, under Board precedent, as set forth in Administrator v. Wollgast, 7 NTSB 1216 (1991), once an airman

has submitted to a reexamination, the only relevant question is whether the airman has successfully demonstrated his competence.

The facts and issues presented in the instant case are extremely similar to those found in Administrator v. Vargas, NTSB Order No. EA-5268, a case that the Board decided on February 20, 2007. In fact, counsel filed the nearly identical brief in both cases, filing the one in the instant case on March 12, 2007. As in Vargas, respondent here does not

- 1) identify any error in the law judge's decisional order;
- 2) contest the statements made by Inspector Cunningham; 3) argue that any material facts remain in dispute; or 4) argue that revocation is an inappropriate sanction for a failure to successfully demonstrate competence. He does not address the clear Board precedent, as set forth in Wollgast, supra at 1217, and reiterated in Vargas, that, "the only relevant question after the [reexamination] test has been given is not whether the Administrator's doubts about the airman's competence were reasonably justified, but, rather, whether his competence was in fact successfully demonstrated."

In short, respondent has neither shown a reason to distinguish his case from Vargas and Wollgast, nor presented an issue warranting departure from established precedent. Summary judgment is appropriate where, as here, there are no genuine

issues of material fact. Therefore, we affirm the law judge's decision and order.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The law judge's decision, affirming the Administrator's emergency order of revocation of respondent's mechanic certificate with airframe and powerplant ratings, is affirmed.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above opinion and order.